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FILED
FEB 5 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 919

ORVILLE GOLDEN, PETITIONER,

vs.

STATE OF MISSOURI, RESPONDENT.

Petition for Writ of Certiorari and Brief In Support Thereof.

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PETITION FOR WRIT OF CERTIORARI.

To The Honorable Harlan Fiske Stone, Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

The petitioner, Orville Golden, respectfully shows to this Honorable Court:

STATEMENT OF MATTERS INVOLVED.

This is a criminal cause in which Orville Golden, Earl Jenkins, Paul Hulehan, and Edward Hill were indicted for

the crime of embezzlement in an alleged violation of Section 4478, R. S. Missouri, 1939. Severance was granted in the cause and the defendants were tried separately.

The defendant filed a demurrer to the indictment, a motion to quash the indictment and a motion to strike, all of which were by the Court, overruled. Upon trial of the cause in the Circuit Court of the City of St. Louis, the defendant was convicted and sentenced to three years in the State Penitentiary.

Motion for new trial was duly filed and was by the Court overruled. Appeal was asked and granted to the Supreme Court of the State of Missouri and the judgment of the trial court was sustained. Thereafter a motion for rehearing and to transfer to the Court en banc was filed within the time allotted by Statute and was by the Supreme Court of the State of Missouri overruled. The petitioner brings the case here for a writ of certiorari.

THE FACTS.

Orville Golden, Earl Jenkins, Paul Hulahan, and Edward Hill were jointly indicted but were tried separately. Jenkins was acquitted; Hill was convicted but the cause was reversed by the Supreme Court of the State of Missouri and is now pending trial in the Circuit Court of the City of St. Louis. The defendant Hulahan was tried once but a mistrial resulted and his cause is still pending in the Circuit Court of the City of St. Louis.

The indictment in this case consisted of over nine pages of legal size typewritten matter and was challenged by the defendant by demurrer, motion to quash and motion to strike. The reasons for said motions being that the indictment was so vague and uncertain that it did not inform the defendant, Golden, of the charges which he would be forced to meet. After the overruling by the Court of the motions aforesaid, the defendant, Golden, filed a motion for continuance, setting out as his grounds that he could not have a fair trial in the City of St. Louis at that time

for the reason that the newspaper publicity had inflamed the public mind against the defendant to the point where he was unable to impanel a jury which was not prejudiced against him. This motion was also overruled by the Court.

In support of the motion for continuance, the defendant, Golden, set out 29 newspaper articles carried by the local newspapers which are preserved in the record herein.

It was also shown that at the time that this cause came for trial that there were investigations being made by the Judges of the Circuit Court, two separate Grand Jury investigations of the jury system, by separate and independent investigations then being had by the Clerk of the Circuit Court and by the acting Circuit Attorney of the City of St. Louis, by an investigation ordered by the jury supervisors consisting of the 18 Judges of the Circuit Court, the Jury Commissioners and the Clerk of the Circuit Court and by an independent investigation by a lay agency, called in and authorized by the Judges of the Circuit Court. The last mentioned agency was known as the Governmental Research Institute.

The evidence showed that the four men indicted were officers of what is known as Local No. 42, being a branch of the American Federation of Labor and the International Hodcarriers, Building and Common Laborers' Union of America.

The defendant, Golden, was the financial secretary and treasurer, Hill was President, and Hulahan and Jenkins were business representatives. The organization was described as a benevolent trade organization. The offices were located on Finney Avenue, west of Grand Avenue, in St. Louis, Missouri. In the years 1940 and 1941 there was considerable war work in St. Louis and attracted a great number of applicants for membership in the Union. The Union received an unusual amount of initiation fees from laborers desiring to work in the various war plants. There were three types of membership in the Union, and were classified as follows:—"Residential" which required an initiation fee of $15.00; "TNT" which required a fee of

$25.00 and "Commercial" which required a fee of $50.00. In addition to the initiation fee, each member was required to pay quarterly dues of $6.00 and 50 cents for a death fund. The total membership fees therefore were $21.50, $31.50 and $56.50 respectively.

In addition to the above mentioned officers, there also were two female employees and other male employees who received money from time to time and issued receipts therefor. Applicants for membership in the Union were permitted to pay initiation fees and dues in installments, during which time they were given what is commonly known as a "work permit". Upon completion of payments, the receipts given were required to be returned to the Union so that a membership card and book issued by the main office in Washington, D. C., could be issued.

According to the testimony of Luella Jones, (one of the female employees) it appears that the bookkeeping method used was to take the receipts brought in by the prospective members of the amount they had paid and when the total amount due was paid, she would send the membership application in to the Main Office. There was a card index and a per capita list from which the "per capita tax sheets" were compiled in Washington. There was also a daily cash book kept but the entries were not ordinarily made simultaneously with the payments made by the members.

The evidence in the case showed that it was a customary practice in the office to stamp the receipts which were issued with a rubber stamp bearing the name of the defendant, Golden.

The evidence showed that Orville Golden was absent from St. Louis from August 4, 1941 until September 22, 1941, and that during that time money receipts were issued stamped with the name of the defendant, Golden.

The evidence shows that the indictment was based principally upon an audit made by one Alfred M. Bleecker,

who testified that he was a certified public accountant and that he made his audit from the index cards, ledgers, and cash books and from information furnished to him by private investigations.

It was shown that during the time the defendant was out of the City huge sums of money were collected which were placed in safety deposit boxes under the name of Edward Hill.

The evidence further showed that on the day of September 29, 1941, two men representing themselves to be agents of the department of internal revenue came into the Union headquarters and demanded to check the affairs and records of the local. These men told the defendant it would be necessary to go to the bank and count the money which was in the safety deposit boxes. After arriving at the bank the so-called agents said that it would be necessary to take the money to the Federal building for a further count. They gave the defendant a receipt for the money and made an appointment with him for the following morning. These men were never seen again, and the defendant reported the personation to the F. B. I. During the course of the investigation which ensued the officers of the F. B. I. told the defendant that it was apparent that someone was embezzling the funds of the local and asked him to sign a confession implicating the other officers of the local so that the authorities would have something to base their charges upon. This the defendant did, whereupon he was arrested and indicted.

After the conviction of the defendant in the Circuit Court of St. Louis, an appeal was taken to the Supreme Court of the State of Missouri which affirmed the judgment of the trial court. Thereafter the defendant filed a motion for rehearing or to transfer to the Court en banc in which he presented the following propositions of law in the following language:

I. The Court erred in failing to rule on the sufficiency of indictment, and particularly in relation to the motion

to strike which was filed and preserved in the motion for new trial.

II. The Court erred in overlooking appellant's contention as to the conduct of the circuit attorney Morris, and his undue and unwarranted attempt to convict this defendant at any cost.

III. The Court overlooked and failed to comment upon the refusal of the trial court to permit appellant upon cross-examination to inquire of the state's witness Coyne (who was a member of the Union) whether or not he thought that the appellant had stolen anything from him.

IV. The Court erred in overlooking and failing to pass upon appellant's assignment of error in relation to the reading of the grand jury notes to the trial jury in this case.

V. The Court overlooked and failed to pass upon appellant's assignment of error in regard to the witness Hunt, testifying to what he learned from a telephone conversation with Hill.

VI. The Court erred in overlooking and failing to pass upon appellant's assignment of error Number 18.

VII. The Court erred in overlooking and failing to pass upon appellant's assignment of error relating to the witness Blecker testifying from records not introduced in evidence and not verified.

VIII. The Court erred in overlooking and failing to pass upon appellant's assignment of error Number 45.

IX. The Court erred in failing to pass upon appellant's assignment of error Number 46.

X. The Court erred in overlooking and failing to pass upon appellant's assignment of error Number 11.

XI. The Court overlooked and failed to comment upon appellant's assignment of error Number 56.

XII. The appellant avers that there is a federal question involved in this case, and for that reason, in the event

the Court does not see fit to grant a rehearing, the case should be transferred to the Court en banc.

Your petitioner cited cases and authorities for each of the propositions involved and presented in the motion for rehearing and to transfer to the Court en banc, but the said Supreme Court overruled the motion on the 13th day of Nov. 1944.

Your petitioner submits that the said Supreme Court of the State of Missouri committed error in deciding said propositions of law so presented to it by the petitioner both in petitioner's original brief and in his motion for rehearing. Wherefore the petitioner presents to this honorable court the following questions:

QUESTIONS PRESENTED.

1. Is the fact that the defendant, Golden, was refused a continuance in view of the showing made of the adverse publicity and the investigations and prejudice on the part of the numerous jury panels called, denied his right of a trial by a fair and impartial jury as guaranteed by the 6th Amendment to the Constitution of the United States.

2. Does the fact that the State of Missouri used evidence against the defendant, Golden, in the nature of secret reports and hearsay evidence, which the defendant was denied the right to see, violate his right to meet and confront his accusers as guaranteed by the 6th Amendment to the Constitution of the United States.

3. Does the fact that Grand Jury notes were read to the Jury and placed in evidence under the guise of refreshing the memory of the witness and over the objection of the defendant, violate the right of the defendant, Golden, to face his accusers as guaranteed by the 6th Amendment to the Constitution of the United States.

4. Does the fact that the defendant, Golden, was denied by the trial Court the right to cross-examine witnesses in order to show their bias and prejudice or interest in the

case, violate his Constitutional rights as provided by the 6th Amendment to the Constitution of the United States.

5. Does the fact that the evidence in this cause was wholly insufficient to sustain the indictment, violate the Constitutional right of the defendant under the 14th amendment which guarantees him that he shall not be deprived of his liberty without due process of law.

6. Does the fact that the indictment in this cause was vague, indefinite, uncertain, verbose and duplicious and failed to properly inform the defendant of the charges which he was called upon to meet, deny the defendant his right under the Constitution to be informed of the charges against him.

7. Does the fact Circuit Attorney, Morris, did everything he could to arouse the public against this defendant including making statements to the newspapers, investigating the jury system, appearing before the jury commissioners, writing letters to members of the Union, using unfair trial tactics, and doing everything possible to obtain a conviction in this case, regardless of how it was accomplished, deny the defendant a fair and impartial trial as provided by the Constitutions of the United States and the State of Missouri.

REASONS FOR GRANTING THE WRIT.

I.

The judgment of the Supreme Court of the State of Missouri affirming the judgment of the trial court and overruling defendant's motion for a rehearing and to transfer to the Court en banc deprived the defendant of his liberty without due process of law contrary to the sixth and fourteenth amendments to the Constitution of the United States.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued by this honorable Court, and that the decision of the Supreme Court of Missouri be reversed.

MORRIS A. SHENKER,
CASPER YOST,
Attorneys for Petitioner.